William J. McGinley, Esq.
Patton Boggs LLP
2550 M Street, NW
Washington, DC 20037

RE: MUR 6077
Norm Coleman
Coleman for Senate ‘08

Dear Mr. McGinley:

On September 30, 2008, the Federal Election Commission notified your clients, Norm Coleman, Coleman for Senate ‘08 and Rodney A. Axtell, in his official capacity as treasurer, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). On May 6, 2009, the Commission found, on the basis of the information in the complaint, and information provided by you, that there is no reason to believe your clients violated the Act in connection with the alleged coordinated communications and reporting violations in this matter. Accordingly, the Commission closed its file in this matter.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003). The Factual and Legal Analyses, which explain the Commission’s finding, are enclosed for your information.

If you have any questions, please contact Audra Hale-Maddox, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

Mark Allen
Assistant General Counsel

Enclosures
Factual and Legal Analyses
FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Norm Coleman

I. GENERATION OF MATTER

This matter was generated by a complaint filed with the Federal Election Commission by the Minnesota Democratic-Farmer-Labor Party, through its Chairman, Brian Melendez. See 2 U.S.C. § 437g(a)(1).

II. FACTUAL SUMMARY

The Complaint alleges that Norm Coleman ("Coleman" or "Respondent"), Coleman for Senate '08 ("CFS") and Rodney A. Axtell, in his official capacity as treasurer, coordinated communications with the U.S. Chamber of Commerce ("the Chamber"); the National Federation of Independent Business's separate segregated fund, the Save America's Free Enterprise (SAFE) Trust and Tammy Boehms, in her official capacity as treasurer ("NFIB"); and Jeff Larson, and thereby accepted prohibited corporate in-kind contributions in the form of the Chamber's three television advertisements and accepted an excessive in-kind contribution in the form of the NFIB's newspaper advertisement. The Complaint bases its allegation on an asserted "close knit web of relations" between the identified persons, and an asserted common vendor relationship between the Chamber/NFIB and Coleman/CFS through Jeff Larson and his company FLS Connect. In addition, the Complaint alleges reporting violations.

The Chamber produced and aired three television ads in Minnesota prior to the 2008 U.S. Senate election that focused on the positions of Coleman's opponent, Democratic Senate candidate Al Franken, on the Employee Free Choice Act and tax increases, and on Coleman's achievements as a Senator on health care, respectively. The television ads aired on August 8,

The available information indicates that these television ads were paid for and aired by the
Chamber on Minnesota television stations. For the two Chamber ads that aired fewer than 30
days before the primary election, the Chamber disclosed its payments of $199,463.00 and
$349,967.00 for the electioneering communications. See 2 U.S.C. § 434(f).

The NFIB ran a full-page newspaper ad in Minnesota prior to the 2008 U.S. Senate
election titled “Take a Quick Quiz and See if You’re One of the Minnesotans Who Would Have
Their Taxes RAISED by Al Franken,” and which contained the NFIB SAFE Trust’s
endorsement of Norm Coleman. The NFIB’s ad ran on September 5, 2008, in the St. Paul
Pioneer Press and the Minneapolis Star Tribune, prior to the Minnesota primary election on
September 9, 2008. On September 4, 2008, the NFIB disclosed its payment of $84,426.00 for
this ad as an independent expenditure on Schedule E.

The available information suggests that Respondent was not aware of the advertisements
produced by the Chamber and the NFIB until the ads appeared on the air or in print, and that
Respondent had not been consulted by the Chamber or the NFIB regarding the advertisements
prior to their release. Available information also indicates that FLS Connect did not perform any
work on the Chamber ads or the NFIB ads at issue in this complaint.

Accordingly, the Commission finds no reason to believe that Norm Coleman violated
provisions of the Federal Election Campaign Act of 1971, as amended (“the Act”) by accepting
excessive in-kind contributions or prohibited corporate in-kind contributions in the form of
coordinated communications.
III. ANALYSIS

Under the Act, no multicandidate political committee, such as the NFIB’s SAFE Trust, may make a contribution, including an in-kind contribution, to a candidate and his authorized committee with respect to any election for Federal office, which in the aggregate exceeds $5,000. 2 U.S.C. § 441a(a)(2); see 2 U.S.C. § 431(8)(A)(i) and 11 C.F.R. § 100.52(d)(1). No candidate or his authorized committee shall knowingly accept a contribution in excess of such limit. See 2 U.S.C. § 441a(f). Also, corporate contributions, including in-kind contributions, to a federal candidate and his authorized political committee are prohibited, and candidates and their authorized committees are prohibited from knowingly accepting such contributions. 2 U.S.C. § 441b(a). The Act defines in-kind contributions as, inter alia, expenditures made by any person “in cooperation, consultation, or concert, with, or at the request or suggestion of, a candidate, his authorized political committees, or their agents.” 2 U.S.C. § 441a(7)(B)(i).

A communication is coordinated with a candidate, an authorized committee, or agent thereof if it meets a three-part test: (1) payment for the communication by a third party; (2) satisfaction of one of four “content” standards; and (3) satisfaction of one of six “conduct” standards. 11 C.F.R. § 109.21.

A. Payment

In this matter, the first prong of the coordinated communication test is satisfied as to both the Chamber’s ads and the NFIB’s ad because both the Chamber and the NIFB appear to have paid for the ads in question. 11 C.F.R. § 109.21(a)(1).
B. Content

The content prong is satisfied where the communication at issue meets one of the following content standards: an electioneering communication; a public communication that republishes, disseminates, or distributes candidate campaign materials; a public communication containing express advocacy; or a public communication that refers to a clearly identified federal candidate that was publicly distributed or disseminated 90 days or fewer before a primary or general election, and was directed to voters in the jurisdiction of the clearly identified federal candidate. 11 C.F.R. § 109.21(c)(1) - (4).

The public communications portion of the content standard appears to be satisfied as to both the Chamber’s television ads and the NFIB’s newspaper ad because all of the advertisements clearly identify either Coleman or Franken, who were each candidates in the 2008 U.S. Senate election in Minnesota, and because the ads were broadcast or published within 90 days of the September 9, 2008, primary as well as the November 4, 2008, general election within the State of Minnesota. See 11 C.F.R. § 109.21(c)(4)(i).

1 After the decision in Shays v. FEC, 414 F.3d 76 (D.C. Cir. 2005) (Court of Appeals affirmed the District Court’s invalidation of the fourth, or “public communication,” content standard of the coordinated communications regulation), the Commission made revisions to 11 C.F.R. § 109.21 that became effective July 10, 2006. In a subsequent challenge by Shays, the U.S. District Court for the District of Columbia held that the Commission’s content and conduct standards of the coordinated communications regulation at 11 C.F.R. § 109.21(c) and (d) violated the Administrative Procedure Act; however, the court did not vacate the regulations or enjoin the Commission from enforcing them. See Shays v. F.E.C., 508 F.Supp.2d 10, 70-71 (D.D.C. Sept. 12, 2007) (NO. CIV.A. 06-1247 (CKK)) (granting in part and denying in part the respective parties’ motions for summary judgment). Recently, the D.C. Circuit affirmed the district court with respect to, inter alia, the content standard for public communications made before the time frames specified in the standard, and the rule for when former campaign employees and common vendors may share material information with other persons who finance public communications. See Shays v. F.E.C., 528 F.3d 914 (D.C. Cir. June 13, 2008). The activity at issue in this matter occurred after the July 10, 2006, effective date of the revisions to Section 109.21.

2 Although we do not need to analyze whether the Chamber’s two television ads in question also meet the “electioneering communication” content standard, the Chamber disclosed its payments for the ads as electioneering communications. See FEC Form 9 filed by U.S. Chamber of Commerce, dated September 9, 2008. In addition, NFIB filed an independent expenditure report disclosing its payment for the ad. See FEC Form 3X filed by National Federation of Independent Business/Save America’s Free Enterprise Trust, dated September 4, 2008.
C. Conduct

The six conduct standards of the coordinated communication test include situations in which the communication is created, produced, or distributed 1) at the request or suggestion of the candidate, his committee, or an agent thereof; 2) with the material involvement of the candidate, the committee, or agent; 3) after a substantial discussion with the candidate, committee, or agent; 4) by a common vendor; 5) by a former employee or independent contractor; or 6) via republication of campaign material. 11 C.F.R. § 109.21(d).

The Complaint alleges that the advertisements at issue “may also meet the third prong” of the test, stating that the “close-knit web of relations between Senator Coleman, the Chamber, NFIB, Jeff Larson, and FLS-Connect … taken together, support the inference that the advertisements were produced at the request of Senator Coleman or his agent, with Senator Coleman’s material involvement, or after substantial discussion with Senator Coleman or his agent.” Complaint at 4-5; see 11 C.F.R. § 109.21(d). Available information indicates that Larson and Coleman have many connections, including 1) Larson’s service as a long-time advisor for Senator Coleman, 2) Larson’s service as the treasurer of Coleman’s Northstar Leadership PAC, and 3) Coleman’s employment of Larson’s wife in one of his local constituent offices in Minnesota. The Complaint alleges that Coleman, CFS, the Chamber, and NFIB have all been clients of Larson’s firm, FLS Connect, and that the coordination took place through Larson as Coleman’s agent. See Complaint at 5. The Complaint further cites this business relationship to support an allegation of coordinated communications through FLS Connect as a common vendor. Id. The available information does not support the Complaint’s allegations.

Addressing complainant’s last allegation first, a vendor is a “common vendor” for the purposes of the Act only if the same vendor creates or distributes the ad alleged to be
coordinated and, within 120 days, has provided specified services for the candidate alleged to
have benefitted from the coordination. See 11 C.F.R. § 109.21(d)(4). The available information
does not indicate that Jeff Larson contracted for, or otherwise participated in, the creation,
production, or distribution of the Chamber’s or NFIB’s advertisements related to the 2008
Minnesota Senate campaign, or otherwise acting as a coordinator for these communications.

More broadly, the available information does not indicate that FLS Connect performed any work
at all for the NFIB during the 2008 election cycle, nor does it indicate that FLS Connect did any
work for the Chamber during the 2008 election cycle other than membership drive telemarketing.

To fulfill the common vendor standard of the conduct prong, it is not sufficient for the
entities involved to have merely hired the same commercial vendor for different work at various
points in the past. Instead, the common vendor must be performing work for the candidate or the
candidate’s committee within 120 days of creating, producing, or distributing the specific
communication(s) alleged to have been coordinated, see 11 C.F.R. § 109.21(d)(4)(ii). Thus, the
available information indicates that FLS Connect is not a common vendor for the purposes of the
Act.

Although the Complaint infers that the advertisements were produced at the request of
Senator Coleman or his agent, with Senator Coleman’s material involvement, or after substantial
discussion with Senator Coleman or his agent, the available information suggests that Coleman
was not involved in any way in the creation or distribution of the ads. See
11 C.F.R. § 109.21(d)(1)-(3).

There is no other support offered for the Complaint’s allegation as to the coordinating
conduct. Unwarranted legal conclusions from asserted facts, or mere speculation, will not be
accepted as true, and “[s]uch speculative charges, especially when accompanied by direct
refutation, do not form an adequate basis to find reason to believe that a violation of FECA has occurred." Statement of Reasons in MUR 4960 (Hillary Rodham Clinton for U.S. Senate Exploratory Committee), issued December 21, 2000 (citations omitted). Here, Complainant’s inferences are convincingly refuted by the available information. The conduct prong of the coordinated communications test does not appear to be fulfilled in this matter, and so the Chamber’s and NFIB’s communications do not appear to have been coordinated with Coleman. Accordingly, Coleman does not appear to have accepted excessive or prohibited in-kind contributions. See 2 U.S.C. §§ 441a(f) and 441b(a).

For the reasons set forth above, the Commission finds no reason to believe that Norm Coleman violated the Act in connection with the alleged coordinated communications.
FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Coleman for Senate and Rodney A. Axtell, in his official capacity as treasurer

I. GENERATION OF MATTER

This matter was generated by a complaint filed with the Federal Election Commission by the Minnesota Democratic-Farmer-Labor Party, through its Chairman, Brian Melendez. See 2 U.S.C. § 437g(a)(1).

II. FACTUAL SUMMARY

The Complaint alleges that Coleman for Senate '08 ("CFS") and Rodney A. Axtell, in his official capacity as treasurer, ("Respondents") and Norm Coleman ("Coleman") coordinated communications with the U.S. Chamber of Commerce ("the Chamber"); the National Federation of Independent Business's separate segregated fund, the Save America's Free Enterprise (SAFE) Trust and Tammy Boehms, in her official capacity as treasurer ("NFIB"); and Jeff Larson, and thereby accepted prohibited corporate in-kind contributions in the form of the Chamber's three television advertisements and accepted an excessive in-kind contribution in the form of the NFIB's newspaper advertisement. The Complaint bases its allegation on an asserted "close knit web of relations" between the identified persons, and an asserted common vendor relationship between the Chamber/NFIB and Coleman/CFS through Jeff Larson and his company FLS Connect. In addition, the Complaint alleges reporting violations.

The Chamber produced and aired three television ads in Minnesota prior to the 2008 U.S. Senate election that focused on the positions of Coleman's opponent, Democratic Senate candidate Al Franken, on the Employee Free Choice Act and tax increases, and on Coleman's
achievements as a Senator on health care, respectively. The television ads aired on August 8,
The available information indicates that these television ads were paid for and aired by the
Chamber on Minnesota television stations. For the two Chamber ads that aired fewer than 30
days before the primary election, the Chamber disclosed its payments of $199,463.00 and
$349,967.00 for the electioneering communications. See 2 U.S.C. § 434(f).

The NFIB ran a full-page newspaper ad in Minnesota prior to the 2008 U.S. Senate
election titled “Take a Quick Quiz and See if You’re One of the Minnesotans Who Would Have
Their Taxes RAISED by Al Franken,” and which contained the NFIB SAFE Trust’s
endorsement of Norm Coleman. The NFIB’s ad ran on September 5, 2008, in the St. Paul
Pioneer Press and the Minneapolis Star Tribune, prior to the Minnesota primary election on
September 9, 2008. On September 4, 2008, the NFIB disclosed its payment of $84,426.00 for
this ad as an independent expenditure on Schedule E.

The available information suggests that Respondents were not aware of the
advertisements produced by the Chamber and the NFIB until the ads appeared on the air or in
print, and that Respondents had not been consulted by the Chamber or the NFIB regarding the
advertisements prior to their release. Available information also indicates that FLS Connect did
not perform any work on the Chamber ads or the NFIB ad at issue in this complaint.

Accordingly, the Commission finds no reason to believe that Coleman for Senate and
Rodney A. Axtell, in his official capacity as treasurer, violated provisions of the Federal Election
Campaign Act of 1971, as amended (“the Act”) by accepting excessive in-kind contributions or
prohibited corporate in-kind contributions in the form of coordinated communications. The
Commission also finds no reason to believe that Coleman for Senate and Rodney A. Axtell, in his official capacity as treasurer, violated the reporting requirements of the Act.

III. ANALYSIS

Under the Act, no multicandidate political committee, such as the NFIB’s SAFE Trust, may make a contribution, including an in-kind contribution, to a candidate and his authorized committee with respect to any election for Federal office, which in the aggregate exceeds $5,000. 2 U.S.C. § 441a(a)(2); see 2 U.S.C. § 431(8)(A)(i) and 11 C.F.R. § 100.52(d)(1). No candidate or his authorized committee shall knowingly accept a contribution in excess of such limit. See 2 U.S.C. § 441a(f). Also, corporate contributions, including in-kind contributions, to a federal candidate and his authorized political committee are prohibited, and candidates and their authorized committees are prohibited from knowingly accepting such contributions. 2 U.S.C. § 441b(a). The Act defines in-kind contributions as, inter alia, expenditures made by any person “in cooperation, consultation, or concert, with, or at the request or suggestion of, a candidate, his authorized political committees, or their agents.” 2 U.S.C. § 441a(a)(7)(B)(i).

A. Coordinated Communications

A communication is coordinated with a candidate, an authorized committee, or agent thereof if it meets a three-part test: (1) payment for the communication by a third party; (2) satisfaction of one of four “content” standards; and (3) satisfaction of one of six “conduct” standards. 11 C.F.R. § 109.21.

1. Payment

In this matter, the first prong of the coordinated communication test is satisfied as to both the Chamber’s ads and the NFIB’s ad because both the Chamber and the NFIB appear to have paid for the ads in question. 11 C.F.R. § 109.21(a)(1).
2. Content

The content prong is satisfied where the communication at issue meets one of the following content standards: an electioneering communication; a public communication that republishes, disseminates, or distributes candidate campaign materials; a public communication containing express advocacy; or a public communication that refers to a clearly identified federal candidate that was publicly distributed or disseminated 90 days or fewer before a primary or general election, and was directed to voters in the jurisdiction of the clearly identified federal candidate. 11 C.F.R. § 109.21(c)(1) - (4).

The public communications portion of the content standard appears to be satisfied as to both the Chamber's television ads and the NFIB's newspaper ad because all of the advertisements clearly identify either Coleman or Franken, who were each candidates in the 2008 U.S. Senate election in Minnesota, and because the ads were broadcast or published within 90 days of the September 9, 2008, primary as well as the November 4, 2008, general election within the State of Minnesota. See 11 C.F.R. § 109.21(c)(4)(i).

---

1 After the decision in Shays v. FEC, 414 F.3d 76 (D.C. Cir. 2005) (Court of Appeals affirmed the District Court's invalidation of the fourth, or "public communication," content standard of the coordinated communications regulation), the Commission made revisions to 11 C.F.R. § 109.21 that became effective July 10, 2006. In a subsequent challenge by Shays, the U.S. District Court for the District of Columbia held that the Commission's content and conduct standards of the coordinated communications regulation at 11 C.F.R. § 109.21(c) and (d) violated the Administrative Procedure Act; however, the court did not vacate the regulations or enjoin the Commission from enforcing them. See Shays v. F.E.C., 508 F.Supp.2d 10, 70-71 (D.D.C. Sept. 12, 2007) (NO. CIV.A. 06-1247 (CKK)) (granting in part and denying in part the respective parties’ motions for summary judgment). Recently, the D.C. Circuit affirmed the district court with respect to, inter alia, the content standard for public communications made before the time frames specified in the standard, and the rule for when former campaign employees and common vendors may share material information with other persons who finance public communications. See Shays v. F.E.C., 528 F.3d 914 (D.C. Cir. June 13, 2008). The activity at issue in this matter occurred after the July 10, 2006, effective date of the revisions to Section 109.21.

2 Although we do not need to analyze whether the Chamber's two television ads in question also meet the "electioneering communication" content standard, the Chamber disclosed its payments for the ads as electioneering communications. See FBC Form 9 filed by U.S. Chamber of Commerce, dated September 9, 2008. In addition, NFIB filed an independent expenditure report disclosing its payment for the ad. See FBC Form 3X filed by National Federation of Independent Business/Save America's Free Enterprise Trust, dated September 4, 2008.
3. Conduct

The six conduct standards of the coordinated communication test include situations in which the communication is created, produced, or distributed 1) at the request or suggestion of the candidate, his committee, or an agent thereof; 2) with the material involvement of the candidate, the committee, or agent; 3) after a substantial discussion with the candidate, committee, or agent; 4) by a common vendor; 5) by a former employee or independent contractor; or 6) via republication of campaign material. 11 C.F.R. § 109.21(d).

The Complaint alleges that the advertisements at issue “may also meet the third prong” of the test, stating that the “close-knit web of relations between Senator Coleman, the Chamber, NFIB, Jeff Larson, and FLS-Connect … taken together, support the inference that the advertisements were produced at the request of Senator Coleman or his agent, with Senator Coleman’s material involvement, or after substantial discussion with Senator Coleman or his agent.” Complaint at 4-5; see 11 C.F.R. § 109.21(d). Available information indicates that Larson and Coleman have many connections, including 1) Larson’s service as a long-time advisor for Senator Coleman, 2) Larson’s service as the treasurer of Coleman’s Northstar Leadership PAC, and 3) Coleman’s employment of Larson’s wife in one of his local constituent offices in Minnesota. The Complaint alleges that Coleman, CFS, the Chamber, and NFIB have all been clients of Larson’s firm, FLS Connect, and that the coordination took place through Larson as Coleman’s agent. See Complaint at 5. The Complaint further cites this business relationship to support an allegation of coordinated communications through FLS Connect as a common vendor. Id. The available information does not support the Complaint’s allegations.

Addressing Complainant’s last claim first, a vendor is a “common vendor” for the purposes of the Act only if the same vendor creates or distributes the ad alleged to be
coordinated and, within 120 days, has provided specified services for the candidate alleged to
have benefitted from the coordination. See 11 C.F.R. § 109.21(d)(4). The available information
does not indicate that Jeff Larson contracted for, or otherwise participated in, the creation,
production, or distribution of the Chamber’s or NFIB’s advertisements related to the 2008
Minnesota Senate campaign, or otherwise acting as a coordinator for these communications.

More broadly, the available information does not indicate that FLS Connect performed any work
at all for the NFIB during the 2008 election cycle, nor does it indicate that FLS Connect did any
work for the Chamber during the 2008 election cycle other than membership drive telemarketing.

To fulfill the common vendor standard of the conduct prong, it is not sufficient for the
entities involved to have merely hired the same commercial vendor for different work at various
points in the past. Instead, the common vendor must be performing work for the candidate or the
candidate’s committee within 120 days of creating, producing, or distributing the specific
communication(s) alleged to have been coordinated, see 11 C.F.R. § 109.21(d)(4)(ii). Thus, the
available information indicates that FLS Connect is not a common vendor for the purposes of the
Act.

In response to the Complaint’s inference that the advertisements were produced at the
request of Senator Coleman or his agent, with Senator Coleman’s material involvement, or after
substantial discussion with Senator Coleman or his agent, CFS campaign manager Cullen
Sheehan denied under oath any knowledge of the Chamber and NFIB ads or their contents prior
to their release, and denied providing either the Chamber or the NFIB with any information
regarding the campaign. See CFS Response at 1-2; Sheehan affidavit at 1-2;

11 C.F.R. § 109.21(d)(1)-(3).
There is no other support offered for the Complaint's allegation as to the coordinating conduct. Unwarranted legal conclusions from asserted facts, or mere speculation, will not be accepted as true, and "such speculative charges, especially when accompanied by direct refutation, do not form an adequate basis to find reason to believe that a violation of FECA has occurred." Statement of Reasons in MUR 4960 (Hillary Rodham Clinton for U.S. Senate Exploratory Committee), issued December 21, 2000 (citations omitted). Here, Complainant's inferences are convincingly refuted by the available information including the response of CFS, which denies knowledge of the NFIB or the Chamber's actions with regard to the 2008 campaign in general or the advertisements in particular, and denies any coordinating activity. The conduct prong of the coordinated communications test does not appear to be fulfilled in this matter, and so the Chamber's and NFIB's communications do not appear to have been coordinated with CFS. Accordingly, Coleman for Senate does not appear to have accepted excessive or prohibited in-kind contributions. See 2 U.S.C. §§ 441a(f) and 441b(a).

B. Reporting Violations

The Complaint suggests that if the communications at issue are found to be coordinated communications, then Respondents failed to disclose the resulting contributions. See 2 U.S.C. § 434. As there appears to be no support for a finding that the communications in this case were coordinated, there is no reason to believe Respondents violated the reporting provisions of the Act.

C. Conclusion

For the reasons set forth above, the Commission finds no reason to believe that Coleman for Senate '08 and Rodney A. Axtell, in his official capacity as treasurer, violated the Act in connection with the alleged coordinated communications.